

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 958

Introduced by Suttle, 10; Byars, 30; Cunningham, 18; Price, 26

Read first time January 10, 2002

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health care facilities; to amend sections
2 71-6014 and 71-6038, Reissue Revised Statutes of
3 Nebraska, sections 71-460, 71-461, 71-6038, 71-6725, and
4 71-6734, Revised Statutes Supplement, 2000, and section
5 71-401, Revised Statutes Supplement, 2001; to define and
6 redefine terms; to provide requirements for medication
7 reviews; to provide for training of certain personnel; to
8 change provisions relating to licensure of
9 assisted-living facilities and Alzheimer's special care
10 units; to change provisions relating to nursing
11 assistants and medication aides; to harmonize provisions;
12 to provide an operative date; and to repeal the original
13 sections.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-401, Revised Statutes Supplement,
2 2001, is amended to read:

3 71-401. Sections 71-401 to 71-463 and sections 4 to 9 of
4 this act shall be known and may be cited as the Health Care
5 Facility Licensure Act.

6 Sec. 2. Section 71-460, Revised Statutes Supplement,
7 2000, is amended to read:

8 71-460. For purposes of this section, and section
9 71-461, and sections 4 to 7 of this act:

10 (1) Activities of daily living means transfer,
11 ambulation, exercise, toileting, eating, self-administered
12 medication, and similar activities;

13 (2) Administrator means the operating officer of an
14 assisted-living facility and includes a person with a title such as
15 administrator, chief executive officer, manager, superintendent,
16 director, or other similar designation;

17 (3) Alzheimer's special care unit has the same meaning as
18 in section 71-516.03;

19 (4) Assisted-living facility has the same meaning as in
20 section 71-406;

21 ~~(3)~~ (5) Chemical restraint means a psychopharmacologic
22 drug that is used for discipline or convenience and is not required
23 to treat medical symptoms;

24 ~~(4)~~ (6) Complex nursing interventions means interventions
25 which require nursing judgment to safely alter standard procedures
26 in accordance with the needs of the resident, which require nursing
27 judgment to determine how to proceed from one step to the next, or
28 which require a multidimensional application of the nursing

1 process;

2 ~~(5)~~ (7) Designee means a person holding a durable power
3 of attorney for health care, a guardian, or a person appointed by a
4 court to manage the personal affairs of a resident of a facility
5 other than the facility;

6 ~~(6)~~ (8) Direct care means assistance with activities of
7 daily living, health maintenance activities, and personal care but
8 does not include housekeeping, maintenance, dietary, laundry,
9 administrative, or clerical work;

10 (9) Direct care staff means the employees of an
11 assisted-living facility providing direct care;

12 (10) Health maintenance activities means noncomplex
13 interventions which can safely be performed according to exact
14 directions, which do not require alteration of the standard
15 procedure, and for which the results and resident responses are
16 predictable;

17 ~~(7)~~ (11) Personal care means bathing, hair care, nail
18 care, shaving, dressing, oral care, and similar activities;

19 ~~(8)~~ (12) Physical restraint means any manual method or
20 physical or mechanical device, material, or equipment attached or
21 adjacent to the resident's body that he or she cannot remove easily
22 and that restricts freedom of movement or normal access to his or
23 her own body; and

24 ~~(9)~~ (13) Stable or predictable means that a resident's
25 clinical and behavioral status and nursing care needs are
26 determined to be (a) nonfluctuating and consistent or (b)
27 fluctuating in an expected manner with planned interventions,
28 including an expected deteriorating condition.

1 Sec. 3. Section 71-461, Revised Statutes Supplement,
2 2000, is amended to read:

3 71-461. (1) Assisted living promotes resident
4 self-direction and participation in decisions which emphasize
5 independence, individuality, privacy, dignity, and residential
6 surroundings.

7 (2) An assisted-living facility shall complete criminal
8 background checks on each member of the direct care staff of the
9 facility.

10 (3) To be eligible for admission to an assisted-living
11 facility, a person shall be in need of or wish to have available
12 room, board, assistance with or provision of personal care,
13 activities of daily living, or health maintenance activities or
14 supervision due to age, ~~infirmity~~ illness, or physical disability.
15 The administrator of the facility shall have the discretion
16 regarding admission or retention of residents subject to the
17 provisions of this section. No assisted-living facility shall
18 admit or retain an individual who requires complex nursing
19 interventions or whose condition is not stable or predictable
20 unless:

21 (a) The resident, if the resident has sufficient mental
22 ability to understand the situation and make a rational decision as
23 to his or her needs or care and is not a minor, the resident's
24 designee, and the resident's physician or the registered nurse
25 agree that admission or retention of the resident is appropriate;

26 (b) The resident or his or her designee is responsible
27 for arranging for the resident's care through appropriate private
28 duty personnel, a licensed home health agency, or a licensed

1 hospice; and

2 (c) The resident's care does not compromise the facility
3 operations or create a danger to others in the facility.

4 (4) An assisted-living facility shall assure that each
5 resident does not require complex nursing interventions and that
6 each resident is stable or predictable or is suitable for admission
7 under subsection (3) of this section. All health maintenance
8 activities shall be performed in accordance with the Nurse Practice
9 Act and the rules and regulations adopted and promulgated under the
10 act.

11 (5) (a) In order to be admitted to an assisted-living
12 facility on and after the operative date of this act, a person
13 shall provide to the facility documentation of a medication review
14 completed in the thirty days preceding the date of admission and a
15 list of medications the person is taking at the time of admission.
16 If the person fails to provide such documentation, the
17 assisted-living facility shall not admit the person to the
18 facility.

19 (b) Each resident in an assisted-living facility shall
20 provide an annual medication review to the facility. If a resident
21 chooses not to provide an annual medication review to the facility,
22 the facility shall not be held liable or responsible for such
23 failure.

24 (c) A medication review shall be performed by a
25 registered nurse, an advanced practice registered nurse, a
26 physician, a physician assistant, or a pharmacist and shall include
27 all prescription medications and all reported over-the-counter
28 medications taken by the resident, including an identification of

1 dosage, frequency of administration, indication or contraindication
2 for use, and drug-to-drug interactions.

3 (6) An assisted-living facility shall provide for a
4 registered nurse to review the policies and procedures of the
5 medication administration process in the facility at least
6 annually.

7 (7) Chemical and physical restraints are prohibited in an
8 assisted-living facility.

9 ~~(6) For purposes of the Life Safety Code under section~~
10 ~~81-502, an assisted-living facility shall be classified as (a)~~
11 ~~residential board and care if the facility meets the residential~~
12 ~~board and care classification requirements of the Life Safety Code~~
13 ~~or (b) limited care if the facility meets the limited care~~
14 ~~classification requirements of the Life Safety Code.~~

15 Sec. 4. For purposes of the Life Safety Code under
16 section 81-502, an assisted-living facility shall be classified as
17 (1) residential board and care if the facility meets the
18 residential board and care classification requirements of the Life
19 Safety Code or (2) limited care if the facility meets the limited
20 care classification requirements of the Life Safety Code.

21 Sec. 5. (1) Any person who is employed as an
22 administrator of an assisted-living facility and who is not a
23 nursing home administrator, a registered nurse, or a licensed
24 practical nurse shall complete a basic personal care course as
25 described in section 7 of this act or provide proof of completion
26 of a basic personal care course or its equivalent as prescribed by
27 the department. A person employed as an administrator in an
28 assisted-living facility on the operative date of this act shall

1 complete the basic personal care course or provide such proof prior
2 to January 1, 2004. A person beginning employment as an
3 administrator in an assisted-living facility after the operative
4 date of this act shall complete the basis personal care course or
5 provide such proof within three months after being employed by the
6 assisted-living facility.

7 (2) Except for the year in which a person completes a
8 basic personal care course, a person who is employed as an
9 administrator in an assisted-living facility shall complete twelve
10 continuing education hours annually, including such topics as
11 resident care and services, social services, financial management,
12 administration, gerontology, and rules, regulations, and standards
13 relating to the operation of an assisted-living facility. If an
14 administrator in an assisted-living facility holds a nursing home
15 administrator license, completion of the continuing education hours
16 required for the license as a nursing home administrator shall be
17 deemed to satisfy the requirements of this subsection.

18 Sec. 6. (1) If an assisted-living facility employs
19 direct care staff, any registered nurse, licensed practical nurse,
20 and nursing assistant as defined in section 71-6014 so employed
21 shall not be required to complete a basic personal care course.

22 (2) Direct care staff employed by an assisted-living
23 facility shall complete a basic personal care course as described
24 in section 7 of this act or provide proof of completion of a basic
25 personal care course or its equivalent as prescribed by the
26 department. A person employed as direct care staff in an
27 assisted-living facility on the operative date of this act shall
28 complete the basic personal care course or provide such proof prior

1 to January 1, 2004. A person beginning employment as direct care
2 staff in an assisted-living facility after the operative date of
3 this act shall complete the basic personal care course or provide
4 such proof within three months after being employed by the
5 assisted-living facility.

6 (3) After the year in which a person employed as direct
7 care staff completes a basic personal care course or beginning upon
8 the date of employment, whichever is later, such person shall
9 annually complete twelve hours of ongoing training on topics
10 appropriate to his or her job duties in order to continue working
11 in an assisted-living facility. If the person works in an
12 Alzheimer's special care unit, six of such hours shall relate to
13 Alzheimer's disease and related dementias.

14 Sec. 7. (1) A basic personal care course shall consist
15 of twenty hours of training to include, but not be limited to,
16 communication and interpersonal skills, skills needed to assist
17 with personal care, health maintenance activities, and activities
18 of daily living, and training for end-of-life care.

19 (2) The department shall adopt and promulgate rules and
20 regulations for approval of curriculum for the basic personal care
21 course and for evaluation of persons who complete the basic
22 personal care course.

23 Sec. 8. (1) A person who is employed as an administrator
24 of an Alzheimer's special care unit as defined in section 71-516.03
25 shall complete an Alzheimer's disease care training course as
26 described in section 9 of this act. A person employed as an
27 administrator in an Alzheimer's special care unit on the operative
28 date of this act shall complete the Alzheimer's disease care

1 training course or provide such proof prior to January 1, 2004. A
2 person beginning employment as an administrator in an Alzheimer's
3 special care unit after the operative date of this act shall
4 complete the Alzheimer's disease care training course or provide
5 such proof within six months after being so employed.

6 (2) An Alzheimer's special care unit shall require each
7 person who provides direct care to residents with Alzheimer's
8 disease and other dementias to complete an Alzheimer's disease care
9 training course as described in section 9 of this act or provide
10 proof of completion of the course or its equivalent as prescribed
11 by the department. Any such person employed in an Alzheimer's
12 special care unit on the operative date of this act shall complete
13 the Alzheimer's disease care training course or provide such proof
14 prior to January 1, 2004. A person beginning such employment in an
15 Alzheimer's special care unit after the operative date of this act
16 shall complete the Alzheimer's disease care training course or
17 provide such proof within six months after being so employed.

18 (3) Any person employed as staff in an Alzheimer's
19 special care unit who does not provide direct care but who provides
20 assistance only with social activities shall complete an
21 Alzheimer's disease care training course as described in section 9
22 of this act or provide proof of completion of the course or its
23 equivalent as prescribed by the department. Such person employed
24 in an Alzheimer's special care unit on the operative date of this
25 act shall complete the Alzheimer's disease care training course or
26 provide such proof prior to January 1, 2004. Such person beginning
27 employment in an Alzheimer's special care unit after the operative
28 date of this act shall complete the Alzheimer's disease care

1 training course or provide such proof within six months after
2 beginning such employment. After completing the Alzheimer's
3 disease care training course, such person shall complete six hours
4 of ongoing training annually in issues related to Alzheimer's
5 disease and related dementias in order to continue working in an
6 Alzheimer's special care unit.

7 Sec. 9. (1) An Alzheimer's disease care training course
8 shall consist of thirty hours of training to include, but not be
9 limited to, an overview of Alzheimer's disease and related
10 dementia, the disease progression and stages, and care for the
11 Alzheimer's patient, including general guidelines for dementia
12 care, physical environment, behavior management, activity
13 programming, family support, end-of-life care, and self-care.

14 (2) The department shall adopt and promulgate rules and
15 regulations for approval of curriculum for the course and for
16 evaluation of persons who complete the course.

17 Sec. 10. Section 71-6014, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 71-6014. Nurse's aide or nursing assistant shall mean
20 any person, other than a licensed registered or practical nurse,
21 employed by a nursing home for the purpose of aiding a registered
22 or licensed practical nurse through the performance of
23 nonspecialized tasks related to the personal care and comfort of
24 residents.

25 Sec. 11. Section 71-6038, Revised Statutes Supplement,
26 2000, is amended to read:

27 71-6038. For purposes of sections 71-6038 to 71-6042,
28 unless the context otherwise requires:

1 (1) Department shall mean the Department of Health and
2 Human Services Regulation and Licensure; and

3 (2) ~~Nursing~~ Nurse's aide or nursing assistant shall mean
4 any person, other than a licensed registered or practical nurse,
5 employed by a nursing home for the purpose of aiding a licensed
6 registered or practical nurse through the performance of
7 nonspecialized tasks related to the personal care and comfort of
8 residents.

9 Sec. 12. Section 71-6039, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 71-6039. (1) No person shall act as a nursing assistant
12 in a nursing home unless such person:

13 ~~(1)~~ (a) Is at least sixteen years of age and has not been
14 convicted of a crime involving moral turpitude;

15 ~~(2)~~ (b) Is able to speak and understand the English
16 language or a language understood by a substantial portion of the
17 nursing home residents; and

18 ~~(3)~~ (c) Has successfully completed a basic course of
19 training approved by the department for nursing assistants within
20 one hundred twenty days of initial employment in the capacity of a
21 nursing assistant at any nursing home if employment begins after
22 January 1, 1984.

23 (2) The department may prescribe a curriculum for
24 training nursing assistants and may adopt and promulgate rules and
25 regulations for such courses of training. The content of the
26 courses of training and competency evaluation programs shall be
27 consistent with federal requirements unless exempted. The
28 department may approve courses of training if such courses of

1 training meet the requirements of this section. Such courses of
2 training shall include instruction on the responsibility of each
3 nursing assistant to report suspected abuse or neglect pursuant to
4 sections 28-372 and 28-711. Nursing homes may carry out approved
5 courses of training within the nursing home, except that nursing
6 homes may not conduct the competency evaluation part of the
7 program. The prescribed training shall be administered by a
8 licensed registered nurse.

9 (3) Prior to October 1, 1990, for nursing assistants at
10 all nursing homes, and on and after such date for nursing
11 assistants at intermediate care facilities for the mentally
12 retarded, such courses of training shall be no less than twenty
13 hours in duration and shall include at least fifteen hours of basic
14 personal care training and five hours of basic therapeutic and
15 emergency procedure training, and on and after October 1, 1990, for
16 nursing assistants at all nursing homes other than intermediate
17 care facilities for the mentally retarded, such courses shall be no
18 less than seventy-five hours in duration.

19 (4) Beginning on the operative date of this act, nursing
20 assistants employed in an Alzheimer's special care unit as defined
21 in section 71-516.03 shall complete an Alzheimer's disease care
22 training course as required in subsection (2) of section 8 of this
23 act and annually thereafter six hours of ongoing training in
24 Alzheimer's disease and related dementias which shall be considered
25 part of the standard continuing education for nursing assistants.

26 (5) This section shall not prohibit any facility from
27 exceeding the minimum hourly or training requirements.

28 Sec. 13. Section 71-6725, Revised Statutes Supplement,

1 2000, is amended to read:

2 71-6725. (1) The minimum competencies for a medication
3 aide, a person licensed to operate a child care facility or a staff
4 member of a child care facility, or a staff member of a school
5 shall include (a) maintaining confidentiality, (b) complying with a
6 recipient's right to refuse to take medication, (c) maintaining
7 hygiene and current accepted standards for infection control, (d)
8 documenting accurately and completely, (e) providing medications
9 according to the five rights, (f) having the ability to understand
10 and follow instructions, (g) practicing safety in application of
11 medication procedures, (h) complying with limitations and
12 conditions under which a medication aide may provide medications,
13 and (i) having an awareness of abuse and neglect reporting
14 requirements and any other areas as shall be determined by rules or
15 regulations.

16 (2) The Department of Health and Human Services
17 Regulation and Licensure shall adopt and promulgate rules and
18 regulations setting minimum standards for competencies listed in
19 subsection (1) of this section and methods for competency
20 assessment of medication aides. The Department of Health and Human
21 Services shall adopt and promulgate rules and regulations setting
22 methods for competency assessment of the person licensed to operate
23 a child care facility or staff of child care facilities. The State
24 Department of Education shall adopt and promulgate rules and
25 regulations setting methods for competency assessment of the school
26 staff member.

27 (3) A medication aide (except one who is employed by a
28 nursing home, an intermediate care facility for the mentally

1 retarded, or an assisted-living facility), a person licensed to
2 operate a child care facility or a staff member of a child care
3 facility, or a staff member of a school shall not be required to
4 take a course. The medication aide shall be assessed to determine
5 that the medication aide has the competencies listed in subsection
6 (1) of this section.

7 (4) A medication aide providing services in an
8 ~~assisted-living facility as defined in section 71-406 shall be~~
9 ~~required to have successfully completed a twenty-hour course on the~~
10 ~~competencies listed in subsection (1) of this section and~~
11 ~~competency standards established through rules and regulations as~~
12 ~~provided for in subsection (2) of this section. Competency~~
13 ~~assessment shall include passing an examination developed and~~
14 ~~administered by the Department of Health and Human Services~~
15 ~~Regulation and Licensure. Criteria for establishing a passing~~
16 ~~standard for the examination shall be established in rules and~~
17 ~~regulations.~~

18 ~~(5)~~ A medication aide providing services in an
19 assisted-living facility as defined in section 71-406, a nursing
20 home, or an intermediate care facility for the mentally retarded
21 shall be required to have completed a forty-hour course on the
22 competencies listed in subsection (1) of this section and
23 competency standards established through rules and regulations as
24 provided for in subsection (2) of this section, except that a
25 medication aide who has, prior to the operative date of this act,
26 completed a twenty-hour course and passed an examination developed
27 and administered by the Department of Health and Human Services
28 Regulation and Licensure may complete a second twenty-hour course

1 supplemental to the first twenty-hour course in lieu of completing
2 the forty-hour course. The department shall adopt and promulgate
3 rules and regulations regarding the procedures and criteria for
4 curriculum. Competency assessment shall include passing an
5 examination developed and administered by the department. Criteria
6 for establishing a passing standard for the examination shall be
7 established in rules and regulations. ~~Before providing services in~~
8 ~~a nursing home or an intermediate care facility for the mentally~~
9 ~~retarded,~~ a medication aide who has previously met the requirements
10 of subsection (4) of this section shall be required to complete an
11 additional twenty-hour course. This twenty-hour course, together
12 with the twenty-hour course set forth in subsection (4) of this
13 section shall be equivalent to the forty-hour course set forth in
14 this subsection.

15 (5) Medication aides providing services in nursing homes
16 or intermediate care facilities for the mentally retarded shall
17 also meet the requirements set forth in section 71-6039.
18 Medication aides providing services in assisted-living facilities
19 shall also meet the requirements set forth in section 6 of this
20 act.

21 (6) The department shall provide for testing once every
22 three years for each medication aide who is employed in an
23 assisted-living facility, a nursing home, or an intermediate care
24 facility for the mentally retarded.

25 Sec. 14. Section 71-6734, Revised Statutes Supplement,
26 2000, is amended to read:

27 71-6734. The department shall set fees for registration
28 and renewal of registration as set forth in sections 71-6726 and

1 71-6728 in an amount not to exceed twenty dollars, for testing as
2 set forth in ~~subsections (4) and (5)~~ subsection (4) of section
3 71-6725 in an amount not to exceed twenty dollars, and for
4 competency assessment as set forth in subsection (3) of such
5 section when conducted by the department in an amount not to exceed
6 five dollars. The fees shall be used to carry out the purposes of
7 the Medication Aide Act. The fees received pursuant to the act
8 shall be remitted to the State Treasurer for credit to the
9 Department of Health and Human Services Regulation and Licensure
10 Cash Fund. The fees are nonrefundable. Such fund shall be used by
11 the department for the purpose of administering the act as provided
12 in this section.

13 Sec. 15. This act becomes operative on January 1, 2003.

14 Sec. 16. Original sections 71-6014 and 71-6039, Reissue
15 Revised Statutes of Nebraska, sections 71-460, 71-461, 71-6038,
16 71-6725, and 71-6734, Revised Statutes Supplement, 2000, and
17 section 71-401, Revised Statutes Supplement, 2001, are repealed.